Filed 3/29/16 P. v. Jiles CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL RAY JILES, Defendant and Appellant.	A144414 (Contra Costa County Super. Ct. No. 051419654)

Michael Ray Jiles (appellant) appeals from a judgment entered after he pleaded no contest to bringing a controlled substance into jail (Pen. Code, § 4573[1]) and the trial court sentenced him to two years in county jail consisting of 16 months of actual custody and eight months of mandatory supervision. The court also revoked appellant's probation in an unrelated case and imposed a one-year concurrent sentence. Appellant contends the court erred in denying his motion to suppress evidence. We reject the contention and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed September 17, 2014, charging appellant with: (1) possessing a controlled substance while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a), count 1); (2) possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a), count 2); (3) bringing a controlled substance into jail (§ 4573, subd. (a)(1), count 3); (4) being a felon in possession of a firearm (§ 29800,

[1]All further unspecified statutory references are to the Penal Code.

subd. (a)(1), count 4); (5) possessing a concealed firearm in a vehicle (§ 25400, subd. (a)(1), count 5); (6) being a felon in possession of a loaded firearm (§§ 25850/25850, subd. (c)(1), count 6); (7) possessing ammunition by a prohibited person (§ 30505, subd. (a), count 7); and (8) possessing a zip gun (§ 33600, count 8). As to count 2, the information alleged appellant was armed with a firearm. (§ 12022, subd. (a)(1).) 22 priors were alleged as to counts 6 and 7, and five prior prison terms were also alleged (§ 667.5).

Appellant moved to suppress evidence (§ 1538.5). The evidence presented at the suppression hearing established that at 11:30 p.m. on January 29, 2014, Antioch Police Officer Ted Chang stopped a green van for a malfunctioning brake light after seeing the van's right brake light not turn on as the driver, later identified as appellant, attempted to apply the brake. Chang stopped the van for the additional reason that it matched the description of a vehicle used by persons who possessed counterfeit currency.

Chang recognized appellant from prior police contacts and asked him if he was still on probation; appellant responded that he was. Chang asked whether appellant had anything illegal; appellant responded that he had a "crank pipe." Chang contacted dispatch, which advised him that appellant was on probation subject to a "full search clause." Chang directed appellant to exit the van to permit a search and found the pipe in a pouch attached to appellant's belt. Chang also found two counterfeit $100 bills in appellant's right front pants pocket. A search of the van uncovered two loaded flare guns, flare rounds, and a shotgun shell. After appellant was arrested and taken to the detention facility, he was searched, and methamphetamine was found on his person.

Appellant testified that the van's brake lights were functioning properly when he checked them before leaving home that night. He said he checked his lights every time he left his home at dark because he did not want to be "pulled over fictitiously (sic) . . . [and] be[] blamed for either taillights not working or my signal light working when I [am] in areas that I guess [are] high crime or whatever." He usually checked the lights himself or had his roommate come out and check them. The night he was pulled over, his girlfriend turned on all of the lights as he walked around and confirmed they

were working. He testified he had not applied the brakes before the police car activated its emergency lights.

The trial court denied the motion to suppress, finding Chang "very credible" and noting "there were portions of [the defendant's] testimony which I had reason to doubt as credible." The court continued: "With regard to the actual facts in the case, I do believe that Officer Chang had two reasons to pull the defendant over, once he became aware of probationary status [then] the search was legal. The two reasons, there was not a Harvey-Madden objection so the information about the green van was legally admitted. I found that credible as well as the brake light. I understand the defendant had an idea as to what could be seen from where he was. I don't see that big of a conflict between the defendant's testimony and the officer's, and I find that the officer could easily have seen the right brake light being non-functioning. [¶] So with that, I am denying the motion to suppress."

Thereafter, appellant pleaded no contest to count 3—bringing a controlled substance into a jail—and all other counts and enhancements were dismissed. The trial court sentenced him to two years in county jail, consisting of 16 months of actual custody and eight months of mandatory supervision. The court also revoked appellant's probation in an unrelated case and imposed a one-year concurrent sentence. Appellant sought a certificate of probable cause, which was denied. He filed a notice of appeal on February 13, 2015.[2]

DISCUSSION

Appellant contends the trial court erred in denying his motion to suppress. He asserts the matter must be remanded for a new hearing under the recently decided United

[2]The Attorney General (respondent) requests that we dismiss the appeal on the ground the notice of appeal was not timely filed. We decline to do so. Appellant executed a notice of appeal on February 8, 2015, and mailed it to the court via "county jail inmate jail" on February 10, 2015—60 days after judgment was entered. Under the California prison-delivery rule, a prisoner's notice of appeal is deemed timely if delivered to prison authorities within the filing period. (*In re Jordan* (1992) 4 Cal.4th 116, 118–119.) Thus, even though the notice of appeal was not received and filed by the court until three days later, it is deemed timely.

States Supreme Court case, *Rodriguez v. United States* (2015) 575 U.S. __ [135 S.Ct. 1609] (*Rodriguez*), which held that a traffic stop must take no longer than necessary to complete the mission of issuing a traffic citation. We reject the contention.

" 'An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] "The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review." [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.' " (*People v. Alvarez* (1996) 14 Cal.4th 155, 182.) Evidence may not be suppressed unless its seizure violated the Fourth Amendment. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

When an officer stops a motorist for an offense for which the motorist cannot be taken into custody and removed from the scene, the officer "may temporarily detain the offender at the scene for a period of time necessary to discharge the duties that he incurs by virtue of the traffic stop. If a warrant check can be completed within the same period, no reason appears to hold it improper: because it would not add to the delay already lawfully experienced by the offender as a result of his violation, it would not represent any further intrusion on his rights." (*People v. McGaughran* (1979) 25 Cal.3d 577, 584 (*McGaughran*).) The duties arising out of—and related to—a traffic stop include the request and examination of the motorist's driver's license and car registration. (*Ibid.*; Veh. Code, §§ 4462, subd. (a), 12951, subd. (b).) If the officer uncovers facts during this permissible detention that give rise to reasonable suspicion that the motorist was involved

in criminal activity, the detention may be lawfully prolonged to permit the office to investigate the suspected activity. (*McGaughran, supra,* 25 Cal.App.2d at pp. 587–590.)

The United States Supreme Court in *Rodriguez, supra,* 135 S.Ct. 1609, essentially agreed with *McGaughran*, holding that "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns." (*Rodriguez,* at p. 1614.) The "mission includes 'ordinary inquiries incident to [the traffic] stop.'. . . Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." (*Id*. at p. 1615.) Any other checks or subsequent investigation unrelated to the stop must be justified by reasonable suspicion that the motorist is engaged in criminal activity. (*Ibid*.)

Assuming appellant has not forfeited his claim,[3] we conclude the detention was not unreasonably prolonged, and complied with the principles set forth in *Rodriguez.* Preliminarily, we question whether the stop even fell within the realm of a typical traffic stop. As noted, the trial court found—and appellant does not challenge the finding—that the stop was lawful not only because the van's right brake light was not working, but also because Chang was aware that someone in a van that matched the one appellant was driving was involved in possessing counterfeit currency. Where there are articulable facts supporting a reasonable suspicion that a person has committed a crime, an officer is justified in conducting a stop to check identification. (See *United States v. Hensley* (1985) 469 U.S. 221, 223; *In re William J.* (1985) 171 Cal.App.3d 72, 77 [officer had reasonable suspicion to stop a car where "he was not acting on a 'hunch,' or out of curiosity," but rather, was aware that a passenger in the car had an outstanding warrant for his arrest]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1521.) Thus, Chang was

[3]Respondent asserts appellant forfeited the claim because he relied on a different theory below, and because the *Rodriguez* case, which simply reiterated a rule that "has been recognized for over 35 years in California," does not "represent[] an unforeseeable change in the law that he could not have raised in the trial court." We need not—and will not—discuss forfeiture because the contention fails on the merits.

justified in stopping the van to determine whether appellant was the individual who had committed offenses related to possession of counterfeit currency.

Moreover, even assuming the detention was no more than an investigation of a traffic violation, we conclude there was no Fourth Amendment violation because any illegality in the length of the detention was attenuated by the confirmation made before the search that appellant was on probation with a "full search clause." Exclusion of evidence is not required where the connection to the original illegality has become so attenuated or has been interrupted by some intervening circumstance so as to remove the taint. (*People v. Brendlin* (2008) 45 Cal.4th 262, 268.) Relying on *People v. Brendlin*, the court in *People v. Durant* (2012) 205 Cal.App.4th 57, 65 held that any illegality in the initial traffic detention was attenuated by the determination, made after the stop, that the defendant was on probation with a search condition. Similarly, here, Chang recognized appellant from prior contacts and asked him if he was still on probation. Appellant admitted that he was, and dispatch confirmed this, adding that there was a "full search clause." Accordingly, any illegality in the length of the detention was attenuated by the confirmation made before the search that appellant was on probation with a full search condition. The trial court did not err in denying appellant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

_____
McGuiness, P.J.

We concur:

_____
Siggins, J.

_____
Jenkins, J.